

MEMO ENDORSED

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

NO. 1:24-CV-05102

3 3/5/2 CAPITAL GP LLC, on behalf of
4 3/5/2 CAPITAL ABS MASTER FUND LP, and
5 LEUCADIA ASSET MANAGEMENT, LLC,

6 Plaintiffs,

7 vs.

MOTION TO SET ASIDE DEFAULT

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/19/2024

8 RYAN WEAR, TYLER SADEK, JORDAN
9 CHIRICO, JEREMY BRIGGS, WATER
10 STATION MANAGEMENT LLC,
11 REFRESHING USA, LLC, CREATIVE
12 TECHNOLOGIES LLC, C3 CAPITAL, INC.,
13 REVL CAPITAL, INC., REVL CAPITAL
14 MANAGEMENT LLC, REVL SECURITIES
15 LLC, CREATIVE TECHNOLOGIES
16 FLORIDA, LLC, WATERSTATION
17 TECHNOLOGY II LLC, WATERSTATION
18 FINANCE COMPANY LLC,
19 WATERSTATION TECHVENTURE LLC,
20 WST FRANCHISE SYSTEMS LLC, WST AZ
21 PROPERTIES, LLC, WSM CAPITAL
22 FUNDING, INC, WS SPV 1 LLC,
23 REFRESHING ARIZONA LLC, REFRESHING
24 CALIFORNIA LLC, REFRESHING
25 CAROLINAS LLC, REFRESHING
26 COLORADO LLC, REFRESHING FLORIDA
27 LLC, REFRESHING GEORGIA
LLC, REFRESHING GREAT LAKES,
LLC, REFRESHING GREAT PLAINS, LLC,
REFRESHING KENTUCKY, LLC,
REFRESHING LAS VEGAS, LLC,
REFRESHING MID-ATLANTIC
LLC, REFRESHING MIDWEST
LLC, REFRESHING MIDWEST REAL
ESTATE LLC, REFRESHING MONTANA
LLC, REFRESHING NEW ENGLAND,
LLC, REFRESHING NEW MEXICO
LLC, REFRESHING OHIO LLC,
REFRESHING TEXAS, LLC, REFRESHING
UTAH LLC, REFRESHING USA MERGER

SUB LLC, REFRESHING WASHINGTON, LLC, VENDPRO LLC, BEVTECK TECHNOLOGIES, LLC, SUMMIT MANAGEMENT SERVICES LLC, IDEAL PROPERTY INVESTMENTS, LLC, IDEAL INDUSTRIAL PARK LLC, IDEAL AZ PROPERTY INVESTMENTS LLC, 2129 ANDREA LANE LLC, 3209 VAN BUREN LLC, ICE & WATER VENDORS, LLC, K-2 ACQUISITIONS, LLC, K-2 MFG LLC, SMOKEY POINT HOLDINGS, LLC, PISTOL INC, EMERTY DEVELOPMENT LLC, ARIZONA WATER VENDOR INCORPORATED, 1118 VIRGINIA STREET LLC, 11519 SOUTH PETROPARK LLC, TCR PLUMBING LLC, FLAGSTAFF PLUMBING LLC, 70 NORTH GARDEN AVENUE LLC, 701 EDEN LLC, AURORA BUILDING PRODUCTS, LLC, 3422 W CLARENDON AVE LLC, 1206 HEWITT AVE LLC, GOLDEN STATE VENTURES, LLC, GOLDEN STATE VENDING, LLC, VALLEY VENDING, LLC, DRINK UP VENTURES, LLC, and JOHN DOES 1-1000

Defendants.

RYAN WEAR RESPECTFULLY REQUESTS THAT THE COURT SET ASIDE DEFAULT.
BACKGROUND:

1. The Plaintiff had filed a case in the Superior Court of State of Washington, County of Snohomish, Case number 24-2-05545-31, after this case in the United States District Court, Southern District of New York.
2. When Defendant realized that the matter was still active in this Court, Exhibit A was immediately filed, on October 21st 2024 at 7:41 AM PST, to notify the Court that there were bankruptcy filings. At the time, Defendant believed the bankruptcy cases stayed all actions in the Court for all parties.

1 3. At a later date Defendant was informed that the stay only existed for the entities in
2 bankruptcy and that a default would be ordered if a response to the Complaint was not
3 filed. The response, marked as Exhibit B, was filed immediately on October 23rd 2024
4 at 11:34 AM PST.

5 4. The Defendant was not aware that a Notice of Appearance was required after a
6 Response to the Court had been filed.

7 5. At a later date, the Defendant was provided the following caption:

8 “ORDER denying as moot 51 Motion to Dismiss; denying as moot 54 Motion to
9 Dismiss; denying as moot 57 Motion to Dismiss; denying as moot 73 Motion to
10 Dismiss. IT IS HEREBY ORDERED that the motions to dismiss currently pending in
11 this case (Dkts. 51, 54, 57, 73) are DENIED as moot. All Defendants (including Mr.
12 Wear, who answered the original Complaint rather than moving to dismiss, see Dkt. 86)
13 must answer or otherwise respond to the Amended Complaint not later than Monday,
14 November 18, 2024. The Clerk of the Court is respectfully directed to close the open
15 motions at Dkts. 51, 54, 57, and 73, and to mail a copy of this order to Mr. Wear at
16 2732 Grand Avenue Suite 122, Everett, WA 98201. SO ORDERED. (Signed by Judge
17 Valerie E. Caproni on 10/29/2024) (tg) Transmission to Docket Assistant Clerk for
18 processing.”

19 6. Defendant read this and believed that all Defendants, including Ryan Wear, now had
20 until November 18th 2024 to respond to the Amended Complaint and all other actions
21 were dismissed.

22 7. Defendant received an email today, November 14th at 9:13 AM PST, from multiple
23 parties, that included the Defendants and Plaintiff counsels, sharing notes for presenting
24 the Joint Status Letter expected to be submitted to the Court tomorrow. This was the
25 first time the Defendant had read the Joint Status Letter. After reviewing the letter, the
26 Defendant noted that a Notice of Appearance was required by the Court. The
27 Defendant immediately filed a Notice of Appearance today at 12:49 PM PST, marked
as Exhibit C and then provided a copy to all parties that were on the Joint Status Motion
thread.

8. At roughly 4:30 PM PST, the Defendant retrieved a letter that the Court had sent
requesting a Notice of Appearance be submitted by November 4th 2024. This is
included in this motion as Exhibit D. This was the first time the Defendant had seen
this request and Order, which prompted this Motion. The mail was significantly
delayed as Defendant had checked mail on Tuesday November 12th and the letter was
not present at that time. Please note that the envelope was stamped by the Post Office
on November 6th 2024, 2 days after the deadline for filing the Notice of Appearance.

CONCLUSION:

1. Under FRCP 55(c), there is good cause for the delay as mail was not received until today, Defendant had previously answered the complaint and there is no prejudice to any other party.
2. Defendant, Ryan Wear, requests that the Default status be set aside due to the reasons outlined in this motion.

Dated 11/14/2024

Respectfully submitted,

/s/Ryan Wear

Ryan Wear

Pro Se

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425-244-0350

Application DENIED AS MOOT. None of the Defendants is currently in default. In light of the filing of the Amended Complaint on October 29, 2024 (Dkt. 91), the Court extended the deadline for all Defendants to move to dismiss the Amended Complaint to **Wednesday, December 11, 2024** (Dkt. 96). If Mr. Wear or any other Defendant wishes to answer the Amended Complaint rather than move to dismiss, they must do so by that date. The deadline for Plaintiffs to move for an order to show cause why default judgment should not be entered against any non-answering or non-appearing Defendants has been adjourned to **Wednesday, December 18, 2024** (Dkt. 98).

Mr. Wear is reminded that he may appear pro se on behalf of himself only. As the Court noted in its October 28, 2024, Order (Dkt. 87), a corporation or other business entity cannot proceed pro se in federal court; it can only appear in federal court if it is represented by an attorney. *Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir. 1998); *see Rowland v. Ca. Men's Colony, Unit II Advisory Council*, 506 U.S. 194, 201–02 (1993). If he has not done so already, the Court again encourages Mr. Wear to review the resources available for pro se litigants in this District, including the Federal Pro Se Legal Assistance Project run by the City Bar Justice Center. An overview of these resources is available on the Court's website at <https://www.nysd.uscourts.gov/prose>.

Additionally, to maximize efficiency and to ensure that he sees all docketed items in a timely manner, the Court encourages Mr. Wear to consider registering to receive documents electronically using the Pro Se Office's consent form, available at <https://www.nysd.uscourts.gov/sites/default/files/pdf/proseconsentecfnotice-final.pdf>.

SO ORDERED.

 11/19/2024

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE